STATE OF MICHIGAN

COURT OF APPEALS

SHARLENE TAYLOR,

Plaintiff-Appellant,

v

KSAR II, INC., d/b/a/ SAMI'S RESTAURANT & DELI,

Defendant-Appellee.

UNPUBLISHED
May 9, 2006

No. 259928
Oakland Circuit Court
LC No. 02-041651-NO

Before: White, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition to defendant. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

This action arises out of injuries plaintiff sustained when she tripped and fell on an uneven portion of sidewalk. On appeal, plaintiff argues that there is a genuine issue of material fact regarding whether the sidewalk's condition was open and obvious.[1] We disagree.

We review de novo the trial court's order granting summary disposition. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). A motion for summary disposition pursuant to MCR 2.116(C)(10) should be granted when the moving party is entitled to judgment as a matter of law because there is no genuine issue of material fact. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In reviewing this motion, the Court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence and construe them in light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004).

Generally, a premises possessor has a duty to protect invitees from known dangerous conditions on the land. *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 96; 485 NW2d 676 (1992). However, if a dangerous condition is open and obvious, a landowner does not owe a

[1] Plaintiff does not argue that the sidewalk contained special aspects making it unreasonably dangerous.

duty to an invitee unless special aspects exist making the condition unreasonably dangerous. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 614-617; 537 NW2d 185 (1995). A danger is open and obvious if it is "known to the invitee or is so obvious that the invitee might reasonably be expected to discover [it] . . . ." *Riddle*, *supra* at 96. Specifically, the standard is whether an average person, with ordinary intelligence would be expected to observe the danger upon casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 475; 499 NW2d 379 (1993). This Court has held that ordinarily, uneven pavement constitutes an open and obvious condition. *Weakley v Dearborn Heights*, 240 Mich App 382, 386; 612 NW2d 428 (2000).

Viewing the pictures and deposition testimony in the light most favorable to plaintiff, the uneven sidewalk was open and obvious as a matter of law. Although plaintiff claims she could not see the crack until after she fell, this assertion is not dispositive. Simply because plaintiff does not notice a condition does not mean the condition was not open and obvious. *Weakley*, *supra* at 386. Plaintiff asserts that she looked down to scan the ground, and then looked up again while walking forward. Plaintiff described the day as very clear and sunny and she noted that she had no problem seeing. The photographs plainly depict a crack in the sidewalk, approximately three-fourths of an inch high. Plaintiff's view of the area immediately before falling would have been from above the area at issue, not from several feet away, as depicted in photographs she submitted.

Affirmed.

/s/ Helene N. White
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot